No. 88-1972

... Court, U.S.
DEC 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF ILLINOIS,

Petitioner,

—v.—

LLOYD PERKINS,

Respondent.

ON WRIT OF *CERTIORARI* TO THE APPELLATE COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF ILLINOIS IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI*

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan, membership organization dedicated to preserving the constitutional protections embodied in the Bill of Rights. The ACLU of Illinois is one of its statewide affiliates.

The present case involves the scope of the right against self-incrimination provided by the Fifth Amendment. Since the right against self-incrimination affects the fundamental nature of the relationship between the individual and the state, the ACLU has long been concerned with any action that accedes to the government the power to compel an individual to provide incriminating information. Because the government action in this case jeopardizes this effort, we respectfully submit this brief as *amici curiae*.

STATEMENT OF THE CASE

On November 8, 1984, Richard Stephenson was shot and killed in Fairview Heights, a suburb of East St. Louis, Illinois. The crime was still unsolved in March 1986 when Kenneth Korunka, an agent of the Illinois Department of Criminal Investigation, contacted the Fairview Heights Police Department about a possible tip in the case. The tip came from a state prison inmate named Donald Charlton, who claimed that respondent Lloyd Perkins, another inmate, had boasted to Charlton about

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of this Court pursuant to Rule 36.2.

killing someone in the East St. Louis area at about the time that Stephenson was murdered in Fairview Heights.

By the time this information was conveyed to the Fairview Heights Police Department, respondent was incarcerated in the Montgomery County Jail in Illinois awaiting trial for an unrelated charge of aggravated battery. Apparently, the Fairview police concluded that respondent's initial comments to Charlton about the Stephenson murder were either insufficient or unreliable. They therefore decided to elicit another confession from him by placing an undercover agent in the same cellblock. As part of this scheme, the police arranged for Charlton's transfer to the Montgomery Jail so that he could introduce respondent to the undercover agent, John Parisi.

Once reunited, Charlton told respondent that he and Parisi had escaped from a work release program and been rearrested while committing a burglary. Charlton then suggested that the three of them escape from the Montgomery County Jail together. When respondent agreed, he was steered into a discussion about escape plans, during which the three men agreed that they would kill anyone who tried to stop them. According to plan, Charlton then indicated that he was not comfortable with murder, in contrast to respondent and Parisi. Again, as planned, Parisi asked respondent if he had ever killed anyone. Respondent repeated his story about the murder in East St. Louis and, upon continued questioning by the undercover agent Parisi, provided considerable detail about the crime.

Later that same day, respondent was arrested for the murder of Richard Stephenson. He was given Miranda warnings for the first time following his arrest and requested an attorney.

Prior to his trial on the murder charge, respondent filed a motion to suppress the incriminating statements he had made in the Montgomery Jail. The trial court granted his motion (Pet.App.11a), based on its finding that Parisi and Charlton were agents of the state who had subjected respondent to custodial questioning in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966).

The appellate court affirmed the trial court's ruling. (Pet.App.1a). Citing *Mathis v. United States*, 391 U.S. 1 (1968), the appellate court held that Miranda warnings are required for any custodial interrogation, even when the purpose of the custody is unrelated to the purpose of the investigation. In addition, it quoted *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980), for the proposition that *Miranda* "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Finally, the appellate court explained that its decision was intended to prevent the police from doing "indirectly what they may not do directly." (Pet.App.8a).

The Illinois Supreme Court denied the State's motion for leave to appeal without an opinion. (Pet.App.10a).

SUMMARY OF ARGUMENT

In *Miranda*, this Court adopted a prophylactic rule designed to ensure that the Fifth Amendment rights of criminal suspects are duly respected. That holding reflects at least three constituent principles. First, the constitutional prohibition against coerced confessions is not limited to physical force. Second, custodial questioning is inherently coercive. Third, a prophylactic rule is essential in this context, both because of the importance of the constitutional right involved and the ease with which it could be otherwise circumvented.

Illinois does not challenge these principles directly. Instead, it contends that custodial questioning by an undercover agent does not violate *Miranda* since a criminal suspect cannot be coerced by the authority of the state if he does not know that he is talking to a state agent.

Despite its superficial appeal, this characterization of *Miranda* is fundamentally flawed. Even petitioner does not seriously dispute that *Miranda* would have been triggered if respondent had been questioned by a uniformed officer while in the Montgomery Jail. The fact that he was incarcerated at the time for another crime is constitutionally irrelevant. *See Mathis v. United States*, 391 U.S. 1 (1968). Petitioner's argument thus reduces to the claim that a police officer can avoid the requirements of *Miranda* simply by taking his uniform off.

This Court has never endorsed such an exception to *Miranda*'s prophylactic rule and should not do so now. *Cf. United States v. Henry*, 447 U.S. 264 (1980)(custodial interrogation by undercover agent after right to counsel had been asserted violates Sixth Amendment). Nor is this a case of simple "misplaced trust" like *Hoffa v. United States*, 385 U.S. 293 (1966). Jimmy Hoffa was not in custody at the time he confided in an undercover agent. Here, the

police engaged in a deliberate ruse to "elicit [Perkins'] incriminating response" that only worked because he was in custody. *Rhode Island v. Innis*, 446 U.S. at 301. Respondent's susceptibility to this jailhouse ruse hardly establishes that his confession was voluntary.

Petitioner's argument in this case is also inconsistent with the very nature of a prophylactic rule. *Miranda* works because it is clear. That clarity would be lost if the decision below were reversed based on an *ad hoc* determination about the existence of coercion. A reversal in this case would also send precisely the wrong signal to law enforcement officers around the country. By condoning the police behavior in this case, it would encourage deceit and trickery rather than respect for constitutional rights.

Amici respectfully urge this Court to avoid that result.

ARGUMENT

MIRANDA'S PROPHYLACTIC RULE THAT WARNINGS MUST BE GIVEN PRIOR TO ALL CUSTODIAL INTERROGATIONS SHOULD NOT BE WAIVED FOR UNDERCOVER CUSTODIAL INTERROGATIONS

Miranda requires a suspect to be warned of his or her constitutional rights before custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966). The warnings allow a suspect to be "aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurances of real understanding and intellectual exercise of the privilege." *Id.* at 469. In the absence of the warnings any statements can be "excluded at trial

despite their voluntary character under traditional principles." *Michigan v. Tucker*, 417 U.S. 433, 443 (1974).

The Court has steadily maintained "that the now-famous warnings be given in every case, regardless of the individual circumstances." *Solem v. Stumes*, 465 U.S. 638, 647 n.7 (1984). The *Miranda* prophylactic rule "overprotects" suspects from custodial interrogation for the sake of "efficient judicial administration of the Fifth Amendment guarantee and the need to create institutional respect for Fifth Amendment values." *Duckworth v. Eagan*, 492 U.S. ___, 109 S.Ct. 2875, 2883 (1989)(O'Connor, J., concurring).

Since the adoption of *Miranda*, this Court has only once allowed an exception to be carved out of the prophylactic rule, and only then for the narrow purpose of protecting the public safety. *New York v. Quarles*, 467 U.S. 649 (1984). Even in creating this exception, the Court emphasized the importance of having the Miranda rule strictly enforced, recognizing that exceptions to it "lessen the desirable clarity of that rule." *Id.*[2] Petitioner's suggestion that a second exception to Miranda be instituted for custodial interrogations by undercover police should be rejected.

A. The Questioning Of Respondent In This Case Constituted Custodial Interrogation

Miranda held that anytime the government undertakes the interrogation of a person in custody, the individual must first be informed of his or her rights. *Miranda*, 384 U.S. at 468. In this case, a custodial interrogation clearly took place.

1. Respondent Was In Custody

Respondent -- who was in jail -- was "in custody," in that he was "deprived of his freedom by the authorities in [a] significant way." *Id.*, 384 U.S. at 478. That respondent was interrogated about an offense unrelated to his imprisonment is constitutionally irrelevant. *Mathis v. United States*, 391 U.S. 1. In *Mathis*, the Court held that not to recognize as "in custody" for *Miranda* purposes those persons interrogated in prison for offenses unrelated to their imprisonment would go "against the whole purpose of the *Miranda* decision which was to give meaningful protection to Fifth Amendment rights." *Id.* at 5. The Court forged a link between the police-controlled environment that the suspect was placed in and the purpose of the government's interrogation: since the government intended to obtain incriminating statements to be used at trial against the suspect, the *Miranda* definition of custody had to apply. *Id.* at 3-4. As the Court said about the activity at issue in *Mathis*, any distinction between undercover government interrogation and *Miranda* becomes "too minor and shadowy to justify a departure from the well-considered conclusions of *Miranda* with reference to warnings to be given to a person held in custody." *Id.* at 4.

Herein lies the critical difference between this case and *Hoffa v. United States*, 385 U.S. 293. Hoffa could not claim that Miranda warnings should have been given in his circumstance because he was not "in custody" at the time of the undercover questioning; in fact, the incriminating conversation took place in Hoffa's hotel room so he had complete control over the environment unlike the

[2] The Court preserved the efficacy of the *Miranda* prophylactic rule by expecting police officers to distinguish "between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect." *Id.* at 659.

respondent here who was in a government-controlled facility. *Id.* at 294.

2. Respondent Was Interrogated

"Interrogation" under *Miranda* encompasses more than simply official government efforts to question a suspect. To constitute an "interrogation" there must be, first, proof of government involvement and, second, evidence of a deliberate government effort to elicit incriminating statements from the suspect. *See generally*, *Rhode Island v. Innis*, 446 U.S. 291; *United States v. Surridge*, 687 F.2d 250, 253, *cert. denied*, 459 U.S. 1044 (1982).

The actions of the state of Illinois meet both of these requirements. In fact, in this case, the police *initiated* the inquiry of the suspect and *manipulated* the circumstances so that the inquiry could take place. As petitioner has admitted, the possibility of obtaining incriminating evidence singularly motivated the police to use an undercover agent. It cannot be said that the police did "nothing to direct or control or involve themselves in the questioning of a person in custody." *United States v. Surridge*, 687 F.2d at 253. Rather, the police here conducted the undercover operation for the express purpose of eliciting an incriminating response. Thus, this undercover government interrogation was clearly action "that the police [knew was] likely to elicit an incriminating response from the suspect," *Rhode Island v. Innis*, 446 U.S. at 300-01, and must be considered "custodial interrogation."

Indeed, in the analogous Sixth Amendment context, this Court has held that questioning by an undercover agent placed in a suspect's cell constituted "interrogation" which could not be undertaken once a request for counsel had been made. *United States v. Henry*, 447 U.S. 264; *see Maine v. Moulton*, 474 U.S. 159 (1985). This precedent

compels the similar conclusion that the questioning which took place in this case constituted "interrogation" for Fifth Amendment purposes as well. Any other ruling would lead to a bizarre asymmetry between the Fifth and Sixth Amendments.

B. The Court Should Not Carve Out An Exception To *Miranda* For Custodial Interrogation By Undercover Agents.

Miranda recognized several constituent principles which will be undermined by waiving the necessity of warnings in instances of undercover custodial interrogations. In particular, *Miranda* recognized that custodial questioning is inherently coercive and that the constitutional prohibition against coerced confessions is not limited to physical force. These important protections would be lost were the Court to carve out an exception to the prophylactic rule in the circumstances of this case. *See* pp.9-14, *infra*. *Miranda* also stands for the proposition that a prophylactic rule is essential in this context, both because of the importance of the constitutional right involved and the ease with which it could be otherwise circumvented. This principle will likewise be sacrificed by an exception to the rule. *See* pp.14-16, *infra*.

1. Undercover Government Interrogation Is Coercion As Envisioned By The Court In *Miranda*

The Court's definition of when a suspect has been coerced to confess, which has evolved over time, encompasses more than mere physical force; it includes acts of psychological deception and trickery committed by the government in obtaining incriminating statements.

Initially, at the state level, the inquiry of coercion consisted of a determination into whether or not govern-

ment interrogation efforts passed the Fourteenth Amendment due process "shock the conscience test." *See e.g., Watts v. Indiana*, 338 U.S. 49 (1949); *Chambers v. Florida*, 309 U.S. 227 (1940); *Brown v. Mississippi*, 297 U.S. 278 (1936).[3] At the federal level, the Court in *Bram v. United States*, 168 U.S. 532 (1897), maintained a "free and voluntary" standard.[4] This federal standard became applicable to the states in *Malloy v. Hogan*, 378 U.S. 1 (1964).

In *Miranda*, the Court decided that this test was no longer viable. The Court considered the interrogation atmosphere so overwhelming that "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice." *Miranda*, 384 U.S. at 458. Custodial interrogation of persons "suspected or accused of crime contain[] inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id.* at 467.

Thus, *Miranda* stands for the proposition that the inquiry into whether the government engaged in "coercion" in a given circumstance involves more than just a determination of whether the suspect decided to talk out of fear. Because coercion can arise from deliberate government efforts to convince one to speak when he or she

[3] Under this due process test, the Court would examine the procedures used by the police to obtain the confession, searching for evidence of physical and psychological coercion that would discount the voluntariness of the confession.

[4] A confession had to be "free and voluntary: that is, [it] must not be extracted by any sorts of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." *Bram*, 168 U.S. at 542-43.

would not have ordinarily -- but for the efforts of the government -- a court must examine the circumstances surrounding the government's attempt to interrogate the suspect. Specifically, a court must determine if the suspect knew what his or her rights were and if the suspect understood "that he [was] not in the presence of persons acting in his interest." *Id.* at 469. *See Duckworth v. Eagan*, 109 S.Ct. at 2875; *California v. Prysock*, 453 U.S. 355, 359-360 (1981).

At its core, *Miranda* stands for the proposition that government efforts to capitalize on the ignorance of suspects and to keep them uninformed of the consequences of incriminating statements are not to be tolerated. The government cannot create scenarios "for no other purpose than to subjugate the individual to the will of his examiner." *Miranda*, 384 U.S. at 457, or to maneuver a suspect "into a position from which the desired objective [a confession] may be attained." *Id.* at 455 (quoting Inbau and Reid, Lie Detection and Criminal Interrogation 185 (3d. ed. 1953)).

In its opinion in *Miranda*, the Court denounced practices that were nothing more than a ruse to get a suspect to give incriminating information. The Court specifically discussed and criticized insidious techniques such as police officers who gave suspects false legal advice,[5] used role playing to gain the confidence of a suspect[6] or manipulated a *bona fide* police investigatory

[5] *Miranda*, 384 U.S. at 455.

[6] A sheme known as the "Mutt and Jeff" routine involved police officers portraying different roles in order to get a suspect to confess. The first cop, Mutt," would be forceful and cruel to the suspect. The second cop, Jeff," would attempt to gain the confidence of the suspect by

(continued...)

technique to convince a suspect to give incriminating testimonial evidence.[7] Undercover interrogation is substantively no different than any of these offensive practices. Like the police practice of deliberately giving false legal advice condemned in *Miranda*, undercover interrogation lulls the suspect into a false sense of security about the legal consequences of a conversation for the sole purpose of obtaining incriminating statements.

In *Rhode Island v. Innis*, 446 U.S. 291, the Court further elaborated on how deceptive practices by the police should be treated. If the "practice" is one that "police should know is reasonably likely to evoke an incriminating response from a suspect," then the safeguards of *Miranda* apply. *Id.* at 301.

The action of the government in this case is precisely the type of deceptive activity which *Miranda* meant to abolish. First, the government placed someone in his cell with whom the suspect was familiar to guarantee that a rapport would be established. Second, the undercover agent concocted a scheme designed specifically for the purpose of convincing the suspect to make incriminating statements. Third, the government asked the suspect

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[6] (...continued)
befriending him or her and then convincing the suspect to confess through kindness. *Miranda*, 384 U.S. at 452.

[7] The police would manipulate the standard lineup scenario with a practice known as the "reverse lineup." In this practice, the police would set up a phony lineup scenario where the suspect, after initially being questioned, would be placed in a lineup and then someone would point the suspect out as the guilty party. After the lineup, questioning would resume and the police would continue as if the suspect's guilt had been firmly established. *Miranda*, 384 U.S. at 453.

specific questions with the hope of obtaining incriminating answers.

Undercover government interrogation such as this is coercion in the *Miranda* sense -- it implicates the exact same constitutional concerns in that it is a practice which seeks to use the intimidating prison setting as a tool to coerce an incriminating statement. The practice provides the government with an easy opportunity to "persuade, trick or cajole [a suspect] out of exercising his constitutional rights." *Miranda*, 384 U.S. at 455. It is one of the "deceptive stratagems" used "to keep the subject off balance . . . by trading on his insecurity about himself and his surroundings." *Id.* at 455.

In the prison setting, the protection provided by *Miranda* is particularly necessary. An inmate cannot resist "the powerful psychological inducements to reach for aid when [he or she] is in confinement." *Henry*, 447 U.S. at 274; *Miranda*, 384 U.S. at 448-54. "The mere fact of custody imposes pressures on the accused; confinement may bring into play subtle influences that will make him particularly susceptible to the ploys of undercover Government agents." *Henry*, 447 U.S. at 274.

"Confinement of the suspect increases the power of the police in an important respect. Because the suspect's ability to select people with whom he can confide is completely within their control, the police have a unique opportunity to exploit the suspect's vulnerability. In short, the police can insure that if the pressures of confinement lead the suspect to confide in anyone, it will be a police agent. In view of the government's control over the suspect's channels of communication, it is blatantly unfair to allow the government to exploit the suspect's vulnerability by trickery of this type." White, *Police Trickery in Inducing Confessions*, 127 U.Pa.L.Rev. 581, 605 (1979)(footnotes

omitted). *See also* Dix, *Undercover Investigations and Police Rulemaking*, 53 Tex.L.Rev. 203, 230 (1975).[8]

"Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that 'illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure.'" *Miranda*, 384 U.S. at 459 (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886)). Undercover government interrogation is such a practice.

2. Public Policy Demands That An Exception Not Be Carved Out Of *Miranda* For Undercover Custodial Interrogations

If the fruits of undercover governmental interrogations of persons in custody are permitted to be introduced at trial notwithstanding the absence of Miranda warnings, the importance of Miranda will be significantly diminished.

Unlike the situation in *New York v. Quarles*, 467 U.S. 649, here, the Court cannot carve out an exception which preserves the efficacy of *Miranda* and the clarity of its prophylactic rule. The government's use of undercover

[8] A growing number of state courts, in recognition of this problem, prohibit undercover government interrogation. *Holyfield v. State*, 711 P.2d 834 (1985); *State v. Fuller*, 278 N.W.2d 756, *rehearing overruled*, 281 N.W.2d 749 (1979); *State v. Travis*, 360 A.2d 548 (1976); *Commonwealth v. Mahnke*, 335 N.E.2d 660, *cert. denied*, 425 U.S. 959 (1976); *Taref v. State*, 512 P.2d 923 (1973); *Commonwealth v. Hamilton*, 285 A.2d 172 (1971). The experience at the state court level has shown that undercover interrogation can give rise to the type of coercion that *Miranda* meant to prevent. *See e.g.*, *State v. Atkins*, 446 P.2d 660, 662 (1968)(where the defendant was placed in a cell with a much larger, violent prisoner, who was working for the state, and who threatened the defendant with death if he did not confess).

interrogation fundamentally conflicts with *Miranda* in that it attempts to dispense with the required warnings for the express purpose of obtaining incriminating testimonial evidence from an ignorant suspect.

If this Court were to make an exception for undercover government interrogation, it would eviscerate the certainty of *Miranda*'s prophylactic rule. It would place the lower courts in the difficult position of attempting to sort out acceptable forms of coercion from unacceptable forms.

Moreover, confessions produced from undercover interrogation would force the courts to revisit questions about the reliability of self-incriminating statements. The practice contravenes the notion that:

> Miranda's well-known warning requirements provided a protection against the possibility of unreliable statements in every instance of in-custody interrogation and thereby covered many situations in which the danger [was] not necessarily as great as when the accused is subjected to overt and obvious coercion.

Michigan v. Payne, 412 U.S. 47, 53 (1973)(quoting *Johnson v. New Jersey*, 384 U.S. 719, 730 (1966)). In an environment where feigned displays of toughness may be necessary for survival, the likelihood of an inmate exaggerating or even fabricating criminal behavior is no less than that of a suspect in the stationhouse interrogation context. In the present case, the government deliberately placed respondent in the midst of a escape scheme where an

admission of a past violent act was almost required of him by the undercover agent in order to maintain the scheme.

As this case proves, undercover government interrogation provides such an easy way to circumvent *Miranda* that carving out an exception for such behavior would render the rule itself virtually meaningless. Undercover interrogation would permit agents to act with pre-*Miranda* zeal and to pursue a suspect "until a confession is obtained." *Miranda*, 384 U.S. at 468. The police would resort to using undercover agents to obtain incriminating statements in both the stationhouse and the jail cell. The police would be able to disregard the notion that "the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth." *Id.* at 460. Prosecutors would resort to the pre-*Miranda* practice of introducing incriminating statements of questionable validity as the sole evidence in criminal trials.

In short, the criminal justice system would revert back to its pre-*Miranda* state: suspects would be ignorant of their rights and the consequences of any statement made to the police and the Fifth Amendment would be "[r]ights declared in words . . . lost in reality." *Id.* at 443 (quoting *Weems v. United States*, 217 U.S. 349, 373 (1910)).

C. If The Court Adopts An Exception To *Miranda* For Undercover Custodial Interrogations, The Exception Should Be Narrowly Limited To Circumstances In Which The Police Involvement Is Minimal, Which Is Not This Case

Amici have argued that all custodial interrogations -- including those accomplished through the deceptive use of undercover agents -- are so inherently coercive that

Miranda necessarily applies. Should the Court disagree and carve out an exception to *Miranda* for custodial interrogations by undercover agents, it ought to limit the exception, as it has in the analogous Sixth Amendment context, to circumstances in which the police have not actively elicited a confession from the suspect.

In *United States v. Henry*, 447 U.S. 264, the Court held that when the government used an undercover agent to engage the defendant in conversation it had undertaken "the functional equivalent of interrogation," *id.* at 277, and thus that the Sixth Amendment was implicated by such action. The Court characterized the efforts proscribed by the Sixth Amendment as those in which the agent "deliberately used his position to secure incriminating information from [the defendant] when counsel was not present." *Id.* at 270. In subsequent cases, the Court has made clear that the Sixth Amendment is not implicated simply by showing that an undercover agent reported incriminating statements to the police; rather, the defendant must demonstrate "that the police and the informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks." *Kuhlmann v. Wilson*, 477 U.S. 436, 459 (1986). *See also Maine v. Moulton*, 474 U.S. 159.

This distinction is similarly relevant to the Fifth Amendment analysis required in this case. Here, the undercover agent did more than merely report an incriminating statement. This was police action at its most aggressive. First, the police arranged not only to have an undercover agent, but also the informant, placed in respondent's cell. Second, the agent, with the informant, concocted an elaborate scheme to compel respondent to confess to the crime at issue. Third, an integral part of the scheme devised by the government required the respondent to boast of this prior killing. It is difficult to

imagine a more deceptive piece of trickery by an undercover agent.

While certain undercover custodial interrogations might not rise to the level of coercion (or might not, therefore, be interrogations), *Kuhlmann v. Wilson*, 477 U.S. 436, this is certainly not such a case. The deceptive hoax manipulated upon respondent herein is exactly the type of police activity sought to be proscribed by *Miranda*.[9]

[9] Indeed, petitioner itself recognizes that manipulative undercover custodial interrogations can be coercive and thus proscribed by *Miranda*. Petitioner's Brief at 22.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to affirm the decision below.

Respectfully submitted,

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Dated: December 15, 1989